Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

DANNY A. MORAN

Petitioner,

v.

HELEN MARIE MORAN

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE
STATE OF ARIZONA, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, the application of Arizona Revised Statutes (A.R.S.) §§25-111 and 25-121, which purport to require a marriage license as a prerequisite for entering into marriage; and, the application of A.R.S. §13-1302.B., which establishes a rebuttable presumption that the mother is the custodian of a child born out of wedlock, unduly burden the Petitioner's exercise of his religious beliefs because he believes that in matters specifically governed by Divine Law, such as marriage, he cannot serve two masters—the State of Arizona and his Creator—and because he believes, as the father of the Child, he and he alone is responsible for "training up the child in the way [she] should go";

2. Whether the application of A.R.S. §§25-111 and 25-121, which purport to require a marriage license as a prerequisite for entering into marriage, are directory or mandatory, where the statutes regulating marriage do not affirmatively declare void those marriages that are solemnized without a marriage license?

THE PARTIES

The only parties are those who appear in the caption of the case. Although the Arizona Attorney General was served with the complaint for declaratory relief as required by A.R.S. §12-1841, Arizona's Declaratory Judgment Act, A.R.S. §12-1831 *et. seq.*, does not require the State to be named a party. Furthermore, although all of the pleadings and briefs were served upon the Attorney General throughout the proceedings in the trial court and during the appeal, no one from the Attorney General's Office or any other representative of the State made an appearance for the State at any stage of the proceedings.

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The Petitioner, Danny A. Moran (Moran), hereby Petitions this Court for a Writ of Certiorari to the Court of Appeals of the State of Arizona, Division One, to review its August 6, 1996 Opinion in *Moran v. Moran*.

OPINIONS OF THE COURTS BELOW

The unpublished decision of the Arizona Superior Court in Maricopa County is found in the Appendix beginning on Page A-21. The Court of Appeals' Opinion, reported at ___ Ariz. ___, 222 Ariz.Adv.Rep. 5, 933 P.2d 1207 (Ariz.App.Div.1, 1996), is found in the Appendix beginning at Page A-7. The text of the unpublished Arizona Supreme Court decision to deny the Petition for Review is found in the Appendix at Page A-1. The Arizona Supreme Court's March 25, 1997 denial of the Petition is noted at 933 P.2d 1207.

JURISDICTION

On August 6, 1996, the Court of Appeals of the State of Arizona entered its Opinion affirming the Superior Court's judgment of dismissal of Moran's Complaint for Failure to State a Claim upon which Relief Can Be Granted. [App., Pgs. A-7 - A-20]. Moran timely filed his Motion for Reconsideration, which was denied on August 29, 1996. [App., Pg. A-3]. Moran then timely filed a Petition for Review to the Supreme Court of the State of Arizona, the denial of which was entered on March 25, 1996. [App., Pg. A-1]. The provisions of 28 U.S.C. §2403(b) may apply and the Attorney General of the State of Arizona has been served. The jurisdiction of this Court to review the judgment of Division One of the Arizona Court of Appeal's August 6, 1996 Opinion by Writ of Certiorari is invoked under the provisions of 28 U.S.C §1257.

STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are involved. The text of each provision is found in Appendix B. The First and Fourteenth Articles in Amendment to the Constitution of the United States of America. The Religious Freedom Restoration Act of 1993 (RFRA), P.L. 103-141, 107 Stat 1488 (42 U.S.C. §2000bb); A.R.S. §§12-1831 *et. seq.*, 13-1302, 25-101, 25-111, 25-121, 25-125 and 25-128.

STATEMENT OF THE CASE AND FACTS

The facts of the case are not in dispute. On March 13, 1992, the Petitioner and the Respondent entered into a written Contract of Marriage [App., Pgs. A-8; A-24]. The Marriage was solemnized before friends and family by a person authorized to perform the Religious Ceremony according to the customs, rules, and regulations of the Petitioner and Respondent's beliefs [App., Pgs. A-9; A-24]. On September 14, 1993, the Respondent gave birth to a Daughter, fathered by the Petitioner. The child received the given name Rebekah Davina Moran ("Child"). [App., Pgs. A-9; A-25]

In late 1993, the Respondent left home and took the Child with her four (4) times. Each time she returned home. In January 1994, she left and returned for the fifth time. However, the Petitioner prevented her from leaving with the Child. During this period of absence the Petitioner urged the Respondent to seek medical help. She voluntarily checked herself into the Maricopa County Mental Health Facility, where she was diagnosed as suffering from chronic depression with a bipolar condition. [App., Pgs. A-9; A-25 - A-26]

Each time the Respondent left, she was also informed by her family and friends, and by officials in the Mesa Police Department, that the Marriage Contract was

invalid, and that the Petitioner had no rights to take custody of the Child. [App., Pg. A-25]. During the first four (4) incidents, the Petitioner discussed the possibility of taking custody of the child with officials in the Mesa, Arizona Police Department. He was informed by the officials that the Department would not abide by the Marriage Contract, because they believed it was invalid. [App., Pgs. A-25 - A-26].

In January 1995, after the Respondent left home again, the Petitioner initiated this action in the Superior Court in Maricopa County, Arizona. [App., Pgs. A-9; A-27]. The Complaint sought Declaratory Relief as to the validity of the Marriage Contract entered into between the Petitioner and the Respondent, the validity of the Marriage solemnized without a marriage license, and that, based upon the Marriage Contract, he was the lawful custodian of the Child.

The Complaint alleged that A.R.S. §§25-111 and 25-121, which purport to require a marriage license as a prerequisite for entering into marriage, were invalid as applied, as they substantially burdened Petitioner's exercise of his religious beliefs. The Petitioner further alleged in the Complaint that the provisions of A.R.S. §§25-111 and 25-121, as applied, were directory and not mandatory, and therefore, no grounds existed to declare void a marriage that was solemnized without a marriage license. The Petitioner also alleged that Arizona Law, to the extent that it presumed that the mother of a child born out of wedlock is the custodian, was invalid, as applied, as it unduly burdened Petitioner's exercise of his religious beliefs. [App., Pgs. A-28 - A-29].

In February of 1995, the Respondent returned home once more. The Respondent had been served before she returned home, but she had not yet answered. When the Respondent did not answer, the Petitioner applied for entry of Default, which was entered by the Clerk of the

Superior Court in March of 1995. ___ Ariz. at ___, 222 Ariz.Adv.Rep. at 6, 933 P.2d at 1210. [App., Pg. A-10]. The Motion for default judgment was filed on May 30, 1995. ___ Ariz. at ___, 222 Ariz.Adv.Rep. at 6, 933 P.2d at 1210. [App., Pg. A-10] The Respondent then filed an Answer and Motion to Set Aside the Entry of Default. ___ Ariz. at ___, 222 Ariz.Adv.Rep. at 6, 933 P.2d 1210. [App., Pg. A-10]. A hearing before the Superior Court was held upon the Petitioner's Motion for Default Judgment and the Respondent's Motion to Set Aside the Default. Although Respondent failed to establish adequate cause to set aside the Default, the Superior Court set aside the Default, found that the Marriage Contract between the Petitioner and Respondent was invalid, that the Marriage was invalid, that the custody arrangements provided for in the Marriage Contract are invalid, and entered judgment dismissing the case. [App., Pg. A-21 - A-22] The Superior Court did not address Petitioner's constitutional claims, but merely found that because the marriage was entered into without a marriage license, the marriage was not valid. [App., Pg. A-21 - A-22]

On Appeal to Division One of the Arizona Court of Appeals, the Petitioner again urged in his Opening and Reply Briefs that A.R.S. §§25-111 and 25-121 unduly burdened the Petitioner's exercise of his religious beliefs, and were directory and not mandatory, and that A.R.S. §13-1302.B. unduly burdened the Petitioner's exercise of his religious beliefs and impaired the obligations of contract. The Court of Appeals found that the marriage license statutes were mandatory, ___ Ariz. at ___, 222 Ariz.Adv.Rep. at 6, 933 P.2d at 1211-12 [App., Pg. A-13] and did not unduly burden the Petitioner's religious beliefs ___ Ariz. at ___, 222 Ariz.Adv.Rep. at 7, 933 P.2d at 1212 [App., Pg. A-14]. The Court also found that these statutes did not burden the Petitioner's beliefs with respect to the custody of his Child, ___ Ariz. at ___, 222

Ariz.Adv.Rep. 7, 933 P.2d at 1213 [App., Pg. A-16, A-17], and that the contract was invalid because the "parents could not bind the courts by their agreements concerning custody." ___ Ariz. at ___, 222 Ariz.Adv.Rep. 8, 933 P.2d at 1214 [App., Pg. A-17, A-18].

The Petitioner then filed a Petition for Review to the Supreme Court of the State of Arizona, which declined to accept jurisdiction on March 25, 1997. [App., Pg. A-1]

REASONS FOR GRANTING WRIT & ARGUMENT

1. The Arizona Court of Appeals' decision that A.R.S. §§25-111 and 25-121, as applied, do not unduly burden Petitioner's exercise of his religious beliefs decided a question of federal law that has not been, but should be, settled by this court.

The facts of this case, at least at the point the case was dismissed in the Superior Court, are clear.[1] The conclusions are inescapable. The Petitioner and Respondent entered into a Marriage Contract and solemnized the marriage. The Marriage was solemnized without a Marriage License in the State of Arizona. The

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1/ The facts were disputed at the pleading stage, and the Superior Court dismissed the Complaint substantially for failure to state a claim. Because those allegations were not challenged in any other way (by way of summary judgment, for example) this court must assume the facts stated in the Complaint are true. *Northeastern Chapter, Associated Fla. Gen. Contractors v. Jacksonville*, 508 US 656, 668-69 (1993), citing *Lucas v. South Carolina Coastal Council*, 505 US 1003, 1012-13, n.3 (1992); *Pennell v. San Jose*, 485 US 1, 7 (1988). Given that presumption, it was inappropriate for the Arizona Court of Appeals to hold that the Petitioner's exercise of his religious beliefs were not substantially burdened. 933 P.2d at 1212. Even if the facts are not clearly articulated in the Complaint, which is found in the Appendix at Pages A-23 - A-31, the Petitioner is proceeding without benefit of counsel and his pleadings should be given liberal construction. *Haines v. Kerner*, 404 US 519, 520 (1974)

Marriage contract also provided that the Petitioner is the lawful custodian of the child. The Opinion of the Arizona Court of Appeals to the contrary notwithstanding, it cannot be doubted that the requirement to obtain a marriage license before solemnizing the marriage substantially burdens the Petitioner's exercise of his religious beliefs, as it requires the Petitioner to seek permission from the State by submitting his decision to enter into marriage to the authority of the State, thereby disobeying the Divine Commands not to "serve two masters" *Matthew* 6:24—his Creator and the State—and to "obey Yahweh and not man." *Acts* 5:29. Nor can it be doubted that the presumption that the Respondent is the lawful custodian of the Child[2] born of the Petitioner and Respondent substantially burdens the Petitioner's exercise of his religious beliefs, since the Petitioner—as the father of the Child—is absolutely responsible for "training up the child in the way [she] should go." *Proverbs* 22:6.

The conflict of the free exercise of one's religious beliefs, and the burdens imposed upon the exercise of those beliefs by a state law that purports to require that a marriage license be obtained before solemnization of the marriage, or presumes that the mother is the lawful custodian of a child purportedly born out of wedlock, has not been directly decided by this Court. However, this Court has long recognized that even a regulation of general application, and apparently neutral on its face may, in its application, nonetheless burden the free exercise of religion. *Wisconsin v. Yoder*, 406 US 205, 220

2/ As will be discussed in greater detail, this presumption is only available under A.R.S. §13-1302.B. in the case of a child that is born out of wedlock, and only for purposes of prosecution for custodial interference. As this Argument and Argument 2 will show, the marriage is not void, thereby rendering assertion of this presumption in this case improper, and rendering the criminal charges illegal.

(1972); *Sherbert v. Verner*, 374 US 398 (1963). *See also* RFRA, §3.

"Only beliefs rooted in religion are protected by the Free Exercise Clause, which by its terms, gives special protection to the exercise of religion." *Thomas v. Review Bd. Ind. Empl. Sec. Div.*, 450 US 707, 713-14 (1981). The Petitioner acknowledges that while the freedom to believe is absolute, the freedom to act upon those beliefs is not. *Reynolds v. United States*, 98 U.S. 143 (1879). This court has established that, in cases involving statutes on the same level as Arizona's Marriage License provisions:

> [t]he free exercise inquiry asks whether the government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burdens. *Church of Lukumi v. Hialeah*, 508 US 520, 565 (1993) (Souter, J., concurring) *quoting Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 US 378, 384-85 (1990)

In concluding that the requirement to obtain a marriage license did not substantially burden the Petitioner's exercise of his religious beliefs, the Court of Appeals avoided the bigger issue of shifting to the State the burden of demonstrating the existence of the compelling governmental interest. See RFRA, §§3(b) and 5(3). As it commenced its analysis, the Court of Appeals acknowledged that the "freedom to marry is recognized as a fundamental right" (cites omitted). 933 P.2d at 1212. The Court then proceeded with its statement that:

> [t]he state is vitally concerned with the estabishment of marriages, because marriage is a relationship in which "the public is deeply interested, for it is the foundation of the family and society, without which there would be neither civilization nor progress. citing *Nelson v. Minner*, 604 F.Supp. 590, 593 (S.D.

Iowa, 1985), *aff'd* 786 F.2d 1172 (8th Cir., 1986) quoting *Maynord v. Hill*, 125 U.S. 190 (1988). *id.*

The Court of Appeals' analysis leads to the inescapable conclusion it considers these and the other cited authorities as having held that the license is a mandatory requisite to a valid marriage. In both fact and law just the opposite is true. It is the solemnization that makes the marriage, not the license.[3] The Petitioner is not challenging the solemnization provisions of A.R.S. §25-111. He is only challenging the validity of the provisions related to the license in ARS §§25-111 and 25-121.[4] The Court of Appeals' reliance on the small part of the quote in this Court's decision in *Maynord v. Hill*, supra, has completely taken the quote out of context. As the complete context of the statement of this Court's pronouncement in *Maynord v. Hill*, supra, shows, it is the "**maintenance**" of the marriage, after the marriage has been entered into, that the public has an interest in.

> It is also to be observed that, whilst marriage is often termed by the text writers and in decisions of courts as a civil contract—generally to indicate that it must be founded upon the agreement of the parties, and does not require any religious ceremony for its solemnization—it is something more than a mere contract. The consent of the parties is of course essential to its existence; but when the **contract to marry is executed by the marriage**, a relation between the parties is created which they cannot change. Other contracts can be modified, restricted, or enlarged, or entirely released upon the consent of

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3/ The Petitioner will be discussing in Argument 2 whether Arizona's marriage license statute is directory or mandatory.

4/ In fact the Court of Appeals acknowledged that the Petitioner was challenging the validity of the licensing provisions and not the solemnization requirements. 933 P.2d 1212 [App., Pg. A-14)

the parties. Not so with marriage. **The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and society, without which there would be neither civilization nor progress**. (emphasis added)
id. at 211.

The marriage exists after solemnization, not by obtaining the license, and the law, after solemnization, defines the obligations and liabilities of the parties. Beyond that, the decision to marry is private, and the legislature may not require the parties to obtain a marriage license and hold the entire marriage out to the public for permission to solemnize the marriage. See *Munn v. Illinois*, 94 US 113, 126 (1874). (The police powers may not attach to a matter of private right (***juris privati only***)).

With the exception of those marriages which are affirmatively declared void in A.R.S. 25-101, the decision to enter into marriage, up to and until it is solemnized, is of private concern to both the Petitioner and the Respondent. It is very clear that the provisions of A.R.S. §§25-111 and 25-121, as they have been applied in this case, with the purported requirement to first obtain a marriage license, is in no real sense a regulation of the marriage. It amounts to the regulation of the decision to enter into marriage. It is clear that this case, having been decided in favor of requiring the marriage license, is not being considered as involving two private parties desiring to enter into marriage, but is one requiring the Petitioner and the Respondent to seek public permission through the license and submit their very **DECISION** to proceed with the solemnization and entry into marriage to public regulation, and in failing to obtain the license,

having permission to solemnize and to live in the state of marriage withheld. This the state **cannot lawfully** do in the exercise of its police powers. cf. *Frost v. Railroad Commission*, 271 US 583, 591 (1926) (A private carrier is unconstitutionally deprived of his property without due process of law by the state requiring him to become a public carrier, in order to secure a permit to use the public highways for transportation purposes. *id.* at 599).

> It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. *id.* 593-94

"[I]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Sherbert v. Verner*, supra, at 404. In the instant case, marriage is not a mere benefit that can be granted or denied by mere whim of legislative enactment. It is a fundamental right as noted at page 7, ante. The exercise of such a fundamental right, like a right to public benefits, should not be conditioned on the non-exercise of constitutionally secured liberties. *cf. Speiser v. Randall*, 357 US 513 (1958)

> [T]o condition the availability of a benefit [including the fundamental right to enter into marriage] upon this [Petitioner's] willingness to violate a cardinal principle of [his] religious faith [of not serving two masters] effectively penalizes the free exercise of [his] constitutional liberties.
>
> *Sherbert v. Verner*, supra, at 406

In an effort to justify its decision that the marriage license statutes do not substantially burden the Petitioner's exercise of his religious beliefs, the Court of Appeals found it necessary to reject out of hand the Petitioner's contention that the requirement to obtain a marriage license constitutes permission to marry.[5] The Court's conclusion that the requirement does not substantially burden the Petitioner's exercise of his beliefs, and the analysis upon which it reached the conclusion, is simply wrong. No matter how fundamental the right to marry is, the fact is the Petitioner and the Respondent, at least in the eyes of the Arizona Court of Appeals, are not married because the Petitioner believes that he cannot serve two masters, and that by obtaining a marriage license he is asking the State for permission to marry, when that decision to marry is a private matter between the Petitioner, the Respondent and their Creator.

"[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *McDaniel v. Paty*, 436 US

5/ The Court's conclusion is somewhat disingenuous considering the weight of decisions and commonly used legal dictionaries have long held that "license" — **By Its Very Definition** — is "[t]he permission by competent authority to do an act which, without such permission, would be illegal, a trespass or a tort." *People v. Henderson*, 391 Mich. 612, 218 N.W.2d 2, 4 (1974).

1. **What is illegal** about a man and a woman entering into the Divinely-Created relationship of Husband and Wife, a Religious Practice in force long antecedent to the creation of the State of Arizona?

2. **What public or private right** is **trespassed** upon by the Union of Man and Woman in Marriage, where, under Divine Law, the **Two become One**?

3. Against whom does such a Union constitute a **Tort**?

618, 628 (1978) *quoting Wisconsin v. Yoder*, supra, at 215. Nothing in the Court of Appeals' opinion reveals how obtaining the marriage license would protect the public's interests in the "maintenance of the marriage" as the Court concluded in *Maynord v. Hill*, supra. The problem in this case has been further compounded by the fact, that even though the Attorney General was served in accordance with A.R.S. §12-1841, no one representing the State appeared in the action to show what interests would be served by requiring the Petitioner and the Respondent to obtain a marriage license.

Finally, the fallout from the Arizona Court of Appeals' decision that the Marriage Contract is not valid, is that the Petitioner's and Respondent's Child is now considered, under Arizona Law, to be a Child born out of wedlock. As such the Mother of the Child is considered to be the custodian of the Child with respect to the enforcement of Arizona's custodial interference law. *See* A.R.S. §13-1302.B. Whether considered separately or together with the Marriage Contract, the clause in the Marriage Contract, providing that the Petitioner would be the custodian of the Child, is enforceable, and fulfills the principle that the Petitioner, as the father of the Child, has the duty to "[train] up the child in the way [she] should go." *Proverbs* 22:6

The Court of Appeals further rejected the Petitioner's assertion of custody of his Child on his religious claims, and later found that the "parents could not bind the courts by their agreements concerning custody." 933 P.2d at 1214 [App., Pg. A-18].. This is contrary to the conclusions reached by this Court in *Wisconsin v. Yoder*, supra, 406 US at 233. (When the interests of the parents are combined with a free exercise claim, the State's action must be measured by a stricter standard than this

that the parental decisions will jeopardize the health or safety of the child, or have the potential for significant social burden). The Court further stated that:

> In the face of our consistent emphasis on the central values underlying the Religion Clauses in our constitutional scheme of government, we cannot accept a parens patriae claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application urged by the State.
>
> *Wisconsin v. Yoder*, supra, at 234

Neither should this Court permit the State of Arizona to assert what amounts to—based upon the Court of Appeals' decision—a conclusive presumption that the mother is the custodian of a child born out of wedlock contrary to the wishes of the parents. The statute starts from the point that the mother is always the best person to maintain custody of the child, in contrast to the circumstances in this case where the undisputed facts show that the Respondent, as the mother of Child, has repeatedly left home and taken the Child with her into unfamiliar and dangerous environments instead of keeping her in the stable and safe environment of the Petitioner's home. Such permanent and irrebuttable presumptions, which are not necessarily or universally true in fact, are disfavored. *Vlandis v. Kline*, 412 US 441 (1973)

Furthermore, the Court of Appeals incorrectly concluded that the Petitioner and Respondent were attempting to "bind the courts by their agreements concerning custody." Just as A.R.S. §13-1302 should be treated as a rebuttable presumption, so should the Petitioner's and Respondent's agreement be treated as a rebuttable presumption. Nothing in the Court of Appeals'

6/ *Pierce v. Society of Sisters*, 268 US 510 (1925)

rebuttable presumption. Nothing in the Court of Appeals' opinion revealed how the Petitioner's and Respondent's Marriage Contract, providing that the Petitioner should be treated the lawful custodian, would jeopardize the health or safety of the child, or have the potential for significant social burden. The Court of Appeals' failure to do so, coupled with the Petitioner's religious free exercise claim, and the State's failure to even appear after being served, necessitates reversal of the Court of Appeals' decision.

2. The Arizona Court of Appeals' decision that A.R.S. §§25-111 and 25-121, as applied, were mandatory and not directory, involves an important federal question in a way that conflicts with relevant decisions of this Court.

Of course the question as to the constitutional infirmities of A.R.S. §§25-111 and 25-121 that were raised in Argument 1 can be avoided by simply finding that the statutory provisions are directory and not mandatory. Furthermore, such a finding would mean that the Petitioner and Respondent are married, at least after proof is made in the lower courts that the marriage was solemnized. Upon that finding, the presumption that the Respondent is the custodian would be inapplicable and provide the Petitioner with the means to protect his child, without fear of being arrested and prosecuted for custodial interference, should the Respondent attempt to remove the Child when she leaves home during the episodes brought on by her depression and bipolar condition and general emotional instability.

In its Opinion, the Court of Appeals also found that the Petitioner had misconstrued this Court's decision in *Meister v. Moore*, 96 US (6 Otto) 76 (1877) and that this Court held for the proposition that Arizona's marriage

> "A statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner; **but such an enactment is a very different thing from a law requiring all marriages** to be entered into in the presence of a magistrate or a clergyman, or that it **be preceded by a license**, or publication of banns, or be attested by witnesses. **Such formal provisions may be construed as merely directory, instead of being treated as destructive of a Common Law right to form the marriage relation by words of present assent.**"

It is clear that it was the Court of Appeals that has misconstrued the this Court's holding in *Meister v. Moore*, supra. It is readily apparent that **this Court was referring to those procedures BEFORE the semi-colon as being MANDATORY and those procedures AFTER the semi-colon as being DIRECTORY**. This Court's subsequent decision in *Travers v. Reinhardt*, 205 US 423, 440 (1906) in which the Court quoted *Meister v. Moore*, leaves no doubt that the Petitioner is correct.

> "All marriages to be entered into in the presence of a magistrate or clergyman, or that it be proceeded by a license, or publication of banns, or be attested by witnesses," may be construed "as **merely directory**, instead of being treated as destructive of a common law right to form the marriage relation by words of present assent."

The decisions by the Arizona courts declaring the mandatory effect of A.R.S. §§25-111 and 25-121 **have been merely a creature of judicial fiat and NOT of statutory declaration**. See *Gamez v. Industrial Commission*, 114 Ariz. 179, 559 P.2d 1085 (App., 1976) (marriages not in compliance with statutory formalities are not void marriages, or voidable marriages, but no

are not void marriages, or voidable marriages, but no marriage at all). Statutes of several states[7], like the State of Arizona, require marriage licenses as a requisite to a valid marriage, and some, like Arizona, do not recognize common law marriage[8]; but nevertheless, they recognize that the license provisions are directory, and a marriage solemnized without a marriage license is valid.[9]

More importantly, the decision of the Court of Appeals in this case and in *Gamez*, supra, appears to be facially in conflict with the Arizona Supreme Court's decision of *Davis v. Industrial Commission*, 88 Ariz. 117, 353 P.2d 627 (1960). In *Davis*, surpa, both the putative husband and wife were married less than a year after their divorces from their former spouses in violation of then A.R.S. §25-320. The Court in *Davis*, supra, at 120 quoting *Horton v. Horton*, 22 Ariz. 490, 198 P. 1105 (1920) held that even though the marriage statutes were violated, the marriage was not void, but merely voidable, and the validity of the marriage could not be collaterally attacked.

> * * * It will be observed that the statutes above cited do not in terms, or by necessary implication, declare such a marriage void. The statutes merely in general terms prohibit such a marriage. No penalty is affixed for disobedience.

7/ North Dakota - NDCC §14-03-10; Rhode Island - GLRI §15-2-1; South Carolina - CLSC §20-1-210; South Dakota - SDCL §25-10; Washington - WRC § 26.40.140

8/ Washington - *Peffley-Warner v. Bowen*, 113 Wash.2d 243, 249, 778 P.2d 1022 (1989); *In Re Gallagher's Estate*, 35 Wash.2d 512, 514-15, 213 P.2d 621 (1950);

9/ Rhode Island - *Souza v. O'Hara*, 121 R.I. 88, 395 A.2d 1060 (1978); Washington - *In re Grauel's Estate*, 70 Wash.2d 870, 871, 425 P.2d 644 (1967); *Weatherall v. Weatherall*, 56 Wash. 344, 350, 105 P. 822 (1909)

The Court in *Davis*, still continuing to quote *Horton v. Horton*, supra, further noted that:

> * * * If the Legislature in so many words had said that, if persons residing in the state, in order to avoid the restrictions contained in suction 3864, and with the intention of returning to reside in this state, go into another state and there have their marriage solemnized, and after return and reside here, their marriage shall be deemed void in this state, an entirely different state of matters would exist

The Court in *Davis*, supra, at 120 then concluded that conditions found in *Horton*, supra, (a marriage solemnized outside Arizona) even applied to marriages solemnized in the State of Arizona. Like the statutes involved in *Davis*, supra and *Horton*, supra, ARS §§25-111 and 25-121 "merely in general terms prohibit such a marriage." However, "no penalty is affixed for disobedience." *id.*

The impetus behind the instant case has been the threats of prosecution for custodial interference being brought against the Petitioner, should he attempt—in primary part to exercise his religious beliefs, and generally proceed on the proposition that the marriage was presumptively valid—to assert custody during those periods when the Respondent left home with the Child. The particular facts of this case would require the prosecution to assert the presumption that the Child was born out of wedlock under A.R.S. §13-1302.B. See Footnote 2, Page 6, *ante*. Assertion of such a presumption, and a resulting prosecution for custodial interference, would be an impermissable collateral attack against the validity of the marriage, as found by the Court in *Davis*, supra.

Finally, the decision by the Court of Appeals in this case and in *Gamez*, supra, is not only arguably in conflict with a decision by Division Two of the Court of Appeals

in *Barbosa-Johnson v. Johnson*, 174 Ariz. 567, 851 P.2d 866 (App., 1993), but it arguably renders the provisions of A.R.S. §25-128.A.2. superfluous. In *Barbosa*, supra, 174 Ariz. at 569, the Court was asked to decide whether the pastor's failure to record the license as required by A.R.S. §25-125 rendered the marriage invalid. The Court held that it did not.

A.R.S. §25-125.A.1. requires that the license be recorded, and A.R.S. §25-128.A.3. punishes as a class two misdemeanor the failure to record the license. A.R.S. §25-125.A. requires a proper marriage license, and A.R.S. §25-128.A.2. punishes, as a class two misdemeanor, the person who solemnizes the Marriage without first being presented with the marriage license. The Petitioner submits that if the failure to **RECORD** the marriage license is not grounds for invalidating the Marriage, then the failure to **OBTAIN** the marriage license and present it is likewise not grounds for invalidating the Marriage.

These provisions are for the benefit of the parties to the Marriage, are addressed to the public officials, provide for punishment of the officials for non-compliance, and **ARE NOT GROUNDS** for invalidating the Marriage. *Barbosa*, supra, at 569. This was the very same sentiment expressed by this Court in both *Meister* and *Travers*, supra. The Court of Appeals' Opinion that these statutes are mandatory **is CLEARLY in DIRECT CONFLICT** with the decisions by this United States Supreme Court, and that conflict requires this Court's intervention to avoid future misapplication of the law by the Arizona Court of Appeals.

As noted above, taking *Gamez*, supra, to its logical conclusion would render the provisions of A.R.S. 25-128.A.2. superfluous. If not having the marriage license means there is no Marriage at all, then it means, as a matter of law, that nothing happened. If nothing happened, then no one can be punished—at least under

A.R.S. §25-128.A.2.—for solemnizing the Marriage without first being presented with the marriage license. Simply put, the mere fact that the ceremony occurred would be of no force or effect. A person who did such a solemnization, based upon the decision in *Gamez*, supra, and the instant case, would have a perfect defense in a prosecution under A.R.S. §25-128; *i.e.* nothing happened.

The usual rule of statutory construction is that it is the words of the statute which demand the Court's scrutiny. *United States v. Wilson*, 503 US 329, 333-336, (1992). It is the words of a statute which express legislative intent, and if those words are unambiguous, judicial inquiry is finished in all but the most extraordinary circumstances. *Estate of Cowart v. Niklos Drilling*, 506 US 469, 475 (1992).

The language of the provisions of A.R.S. §§25-111, 25-121, 25-125, and 25-128 are plain, unambiguous, and clear on their face. There is no need for any judicial interpretation or resort to anything else. Where statutory language is plain, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Industries*, 489 U.S. 235, 241 (1989). Further, when a statute limits a thing to be done in a particular manner or under a specific set of conditions, such limitation includes the negative of any other manner. *Botany Worsted Mills v. U.S.*, 278 U.S. 282 (1989). Thus, the only purpose for A.R.S. §§25-111, 25-121, 25-125, and 25-128 taken together **is to impose duties on public officials.** This interpretation is the only one which would be in accord with the policy to avoid any statutory interpretation that renders any section superfluous and does not give effect to all of the words used by the Legislature. *Connecticut National Bank v. Germain*, 503 US 249, 253 (1992). Any interpretation to the contrary would render at least A.R.S. §25-128.A.2. superfluous and ineffective.

CONCLUSION

The federal questions are substantial and of utmost importance, in that it could impact statutory provisions in most—if not all—of the states. While the precise issue of the Petitioner's free exercise claim against the requirement to obtain a marriage license as a prerequisite to solemnizing the marriage is one of first impression, the principles articulated in *Sherbert v. Verner* and *Wisconsin v. Yoder* and the Religious Freedom Restoration Act[10] require this Court to reverse the decision of Division One of the Arizona Court of Appeals.

Alternatively, Division One of the Arizona Court of Appeals is clearly in conflict with this Court's decision in *Meister v. Moore* and *Travers v. Reinhardt* and, reversal is necessary even without regard to the Petitioner's free exercise claim.

Accordingly, and for the forgoing reasons, this Court should issue its Writ of Certiorari to Division One of the Arizona Court of Appeals.

RESPECTFULLY SUBMITTED this **20th** day of June, 1997.

Danny A. Moran
c/o 5804 West Vista Avenue #734
Glendale, Arizona 85301
(602) 530-8866
Petitioner, In Pro Per

10/ The Petitioner is aware that the question of the Constitutionality of the RFRA is currently pending before this Court in *City of Boerne v. Flores*, 95-2074. However, whether or not the RFRA is ultimately upheld or struck down should have no negative impact on the instant case since the principles of *Sherbert v. Verner* and *Wisconsin v. Yoder* should still be controlling.

APPENDIX A

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Supreme Court

State of Arizona

Noel K. Dessaint
Clerk of the Court

Kathleen E. Kempley
Chief Deputy Clerk

402 Arizona State Courts Building
1501 West Washington
Phoenix, Arizona 85007-3329

Telephone: (602) 542-9396

March 28, 1997

RE: DANNY A. MORAN vs HELEN MARIE MORAN
Supreme Court No. CV-96-0531-PR
Court of Appeals No. 1 CA-CV 95-0437
Maricopa County No. CV 95-90260

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 25, 1997, in regard to the above-referenced cause:

ORDERED: Appellants' Petition for Review by Supreme Court = Denied

Record returned to Court of Appeals, Division One, Phoenix this 28th day of March, 1997.

NOEL K. DESSAINT, Clerk

TO: Danny A. Moran
Helen Marie Braun, c/o E. Terros
Glen D. Clark, Clerk, Court of Appeals, Division One
West Publishing Company
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA
FILED AUG 29 1996
GLEN D. CLARK, CLERK

DANNY A. MORAN,	)
	) 1 CA-CV 95-0437
Plaintiff-Appellant,	)
	) DEPARTMENT E
v.	)
	) MARICOPA COUNTY
HELEN MARIE MORAN,	) Superior Court
	) No. CV 95-90260
Defendant-Appellee.	)
	) O R D E R
	)

The Court has considered the motion for reconsideration filed by plaintiff-appellant.

IT IS ORDERED denying the motion for reconsideration.

DATED this 29th day of August, 1996.

/s/ Jon W. Thompson
JON W. THOMPSON, Judge

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA
FILED AUG 6 1996
GLEN D. CLARK, CLERK

DANNY A. MORAN,	)
	) 1 CA-CV 95-0437
Plaintiff-Appellant,	)
	) DEPARTMENT E
v.	)
	) MARICOPA COUNTY
HELEN MARIE MORAN,	) Superior Court
	) No. CV 95-90260
Defendant-Appellee.	)
	) O R D E R
	)

The above-entitled matter was duly submitted to the Court.

IT IS ORDERED that the opinion be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the opinion be sent to each party appearing herein or the attorney for such party and to The Honorable David L. Roberts, Judge.

DATED this 6th day of August, 1996.

/s/ Jon W. Thompson
JON W. THOMPSON, Judge

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA
FILED AUG 6 1996
GLEN D. CLARK, CLERK

DANNY A. MORAN,	)
	) 1 CA-CV 95-0437
Plaintiff-Appellant,	)
	) DEPARTMENT E
v.	)
	) O P I N I O N
HELEN MARIE MORAN,	)
	)
Defendant-Appellee.	)
	)

Appeal from the Superior Court of Maricopa County
Cause No. CV 95-90260
The Honorable David L. Roberts, Judge

AFFIRMED

Danny A. Moran *In Propria Persona*	Mesa
Helen M. Braun *In Propria Persona*	Mesa

T H O M P S O N, Judge

Danny A. Moran (Moran) and Helen M. Braun (Braun) attempted to marry under the terms of a private

marriage contract rather than by obtaining a marriage license. Moran asserts that the license requirement violates his religious beliefs and thus is unconstitutional. We hold that the license requirement is valid because it does not substantially burden Moran's religious beliefs and that the parties' purported marriage is invalid because they did not obtain the required license.

FACTS AND PROCEDURAL HISTORY

In March 1992, Moran and Braun entered into a contract entitled "Marriage Contract." The contract provided that it was irrevocable and based on "the Divine Law of Yahweh, as revealed in Holy Scripture." Also contained in the contract is the statement that the agreement "is not subject to any statute, rule, regulation, or policy of man, in any jurisdiction whatsoever, if said statute, rule, regulation, or policy is contrary to the Principles of Divine Law. Nor are any of its provisions voidable or challengeable in any court in any jurisdiction."

In the agreement, Moran and Braun contracted to enter into "the state of Holy Matrimony, recognizing the Divine Law of Yahweh as the sole authority for creating and regulating the role and status of Husband and Wife." The remainder of the contract reads:

> The Marriage shall be structured according to the Patriarchal Laws of Holy Scripture, and the Authority, Responsibility, and Headship of the Husband shall not, and cannot, be challenged or otherwise interfered with by any civil authority. Any issue of the Marriage shall not be under any form of disability, conventional, legal, or otherwise, to any civil government; shall owe its existence solely to Yahweh; shall, under the Divine Law of Headship, be subject only to the

> Husband/Father in temporal matters; and cannot be compelled to contract into any form of civil servitude repugnant to and violative of said Divine Law.
>
> All forms of civil law relevant to Marriage and Family not in conformance with the Principles of the Divine Law of Yahweh are specifically repudiated, and the parties declare them to be non-binding and un-enforceable upon this Union.

The contract includes "Vows of Union," which Moran and Braun signed before a notary public; the vows are much like traditional wedding vows. The union was solemnized on April 5, 1992, in a religious ceremony with family and friends in attendance. The contract was recorded in the Maricopa County Recorder's Office on September 24, 1993.

On September 14, 1993, a daughter was born to the couple. Between November 1993, and February 1994, Braun periodically left Moran, taking the child with her, but then returned to Moran. Braun initiated at least five such temporary separations. In January 1995, Braun again left Moran. Moran filed both domestic relations and juvenile actions seeking to obtain custody of his daughter. Braun filed a petition seeking a protective order. On February 9, 1995, Moran filed the declaratory judgment action that is the subject of this appeal. He sought a judgment declaring that (1) the marriage contract was valid and enforceable, any Arizona statute to the contrary notwithstanding, (2) a valid marriage existed between Moran and Braun, (3) Braun had breached the contract and was not allowed to remove the child from Moran's custody without his consent, (4) Braun must return the child to Moran, (5) Moran was the sole and lawful custodian of the child, and (6) Ariz. Rev.

Stat. Ann. (A.R.S. §25-111 *et seq.* is constitutionally invalid as applied to the facts of the case.[11]

Braun failed to file an answer to the complaint, and Moran applied for an entry of default. Default was entered on March 15, 1995. Moran subsequently moved for a default judgment. He argued that the marriage contract created a legal and lawful marriage and that A.R.S. §§25-111 and 25-121 are invalid, as applied to his marriage contract, because the requirement of a marriage license interfered with his free exercise of his constitutionally-protected religious freedoms, impaired the obligations of contract, and violated equal protection of the law. He pointed out that the consequence of invalidity of the marriage contract due to the state requirement would be that he would not be presumed to be his child's father.

Braun filed an answer to the complaint in June 1995. She also moved to set aside the entry of default.

After hearing oral argument on the motion for a default judgment, the trial court found and declared that the purported marriage of Moran and Braun was entered into without the issuance of a marriage license as required by A.R.S. §25-111 and therefore was not a valid marriage. The court further declared that the contract between the parties was not enforceable as a marriage contract nor could it control the custody of the child of the parties. Because, as a matter of law, the court could

---

11/ Moran's complaint named as defendants Braun and Michael Doyle. Doyle had been appointed by the juvenile court as guardian ad litem for the child in the juvenile court action. In addition to the declaratory relief sought, Moran asked for an order permanently enjoining Braun and Doyle from interfering with Moran's custody of the child. The court dismissed Doyle from the action, and he is not a party to this appeal.

not grant the declaratory relief sought by Moran, it ruled that Braun's motion to set aside the entry of default was moot. The court also denied as moot Braun's petition for temporary orders regarding custody and support because the paternity of Moran had not yet been established.

Moran filed a timely notice of appeal from the judgment. We have jurisdiction pursuant to A.R.S. §12-2101(B).

DISCUSSION

A. Validity of A.R.S. §§25-111 and 25-121

Moran argues that A.R.S. §§25-111 and 25-121 are invalid because they unduly burden his exercise of his religion. He states that his belief is that he must obey Yahweh (God) rather than men. According to Moran, the marriage license requirement is the state's attempt to replace his God with a statutory scheme such that if he has to comply with the statutory scheme he will be forced to put another god before his God. He contends that the license requirement is invalid under the Religious Freedom Restoration Act of 1993, 42 U.S.C §2000bb (RFRA); Article 1, §10, clause 1 of the United States Constitution; and the First, Fourth, Fifth, Ninth, Tenth, and Fourteenth Amendments to the Constitution.

The requirements for a valid marriage in Arizona are set forth at A.R.S. §25-111(B):

> B. A marriage contracted within this state is not valid unless:
>
> 1. A license is issued as provided in this title, and
>
> 2. The marriage is solemnized by a person authorized by law to solemnize marriages, or by a person purporting to act in such capacity and

believed in good faith by at least one of the parties to be so authorized.

Additionally, A.R.S. §25-121(A) provides:

> No persons shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the superior court in any county of this state.

As set forth by these statutes, both a marriage license and a solemnization ceremony before an authorized person are required for a marriage contracted within Arizona to be valid. See Gamez v. Industrial Comm'n, 114 Ariz. 179, 181-82, 559 P.2d 1094, 1096-97 (App. 1976); In re Trigg's Estate, 3 Ariz. App. 385, 387, 414 p.2d 988, 990 (1966), *aff'd*, 102 Ariz. 140, 426 P.2d 637 (1967). Therefore, because there is no dispute that Moran and Braun did not obtain a marriage license as required by A.R.S. §25-111 and 25-121, their purported marriage, notwithstanding their private "marriage contract," is not valid.

Relying on Meister v. Moore, 96 U.S. (6 Otto) 76 (1877), Moran argues that A.R.S. §§25-111 and 25-121 are directory and not mandatory. He contends that the Meister court ruled that absent a statute specifically rendering certain marriages void, statutes requiring the issuance of a marriage license must be construed as directory rather than mandatory. Moran misreads Meister. The Court there stated:

> A statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner; but such enactment is a very different thing from a law requiring all marriages to be entered into in the presence of a magistrate or a clergyman, or that it be preceded by a license, or

> publication of banns, or be attested by witnesses. Such formal provisions may be construed as merely directory . . . .

Thus, the Court indicated that a statute that declares that a marriage is not valid unless certain requirements occur is mandatory. Section 25-111 contains this mandatory language.

Because application of A.R.S. §§25-111 and 25-121(A) means that Moran and Braun are not legally married, we examine whether this statute violates Moran's right to exercise his religion. We conclude that the statutory requirement of obtaining a marriage license does not violate either the constitutional or federal statutory protections of Moran's right to practice his religious beliefs.

We start our analysis by considering the state's interest in marriage. Marriage is a basic civil right, and the freedom to marry is recognized as a fundamental right within the protective ambit of the equal protection clause of the Fourteenth Amendment. Nelson v. Minner, 604 F. Supp. 590, 592 (S.D. Iowa 1985), *aff'd*, 786 F.2d 1172 (8th Cir. 1986); Boynton v. Kusper, 494 N.E.2d 135, 140 (Ill. 1986) (citing Loving v. Virginia, 388 U.S. 1, 12 (1967)). Nevertheless, the state is also vitally concerned with the establishment of marriages because marriage is a relationship in which "the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress." Nelson, 605 F. Supp. at 593 (quoting Maynard v. Hill, 125 U.S. 190, 211 (1888)). The licensing and performance of marriage are of paramount importance to the state and are subject to its control. Rubino v. City of New York, 480 N.Y.S.2d 971, 972 (N.Y. Sup. 1984).

It is well-established that states have the power to determine how its residents may enter into marriage. United States v. Seay, 718 F.2d 1279 (4th Cir. 1983), *cert. denied*, 467 U.S. 1226 (1984). See also In re Guardianship of Mikulanec, 356 N.W.2d 683, 689 (Minn. 1984) (Marriage is "a social relationship subject to the state's police powers"). Accordingly, "(r)easonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed." Zablocki v. Redhail, 434 U.S. 374, 386 (1978). See also Califano v. Jobst, 434 U.S. 47, 53 (1977); Nicpon by Urbanski v. Nicpon, 495 N.E.2d 1193, 1196 (Ill. App. 1986). Among the matters the state may control are the forms and procedures necessary to solemnize marriages. Nelson, 604 F. Supp. at 592.

Arizona has codified its procedures necessary to form legal marriages at A.R.S. §25-111. Only two procedural steps are required—obtaining a marriage license and solemnizing the marriage by a person authorized to do so. Moran challenges only the marriage license requirement.

A court may determine whether a state act imposes a substantial burden on an individual's exercise of religion. See Fordham Univ. v. Brown, 856 F. Supp. 684, 697 (D.D.C. 1994) (regulations prohibiting federal funding of telecommunication equipment for sectarian programming did not burden free exercise of religion, much less substantially burden it). We conclude that Arizona's marriage license requirement does not substantially burden Moran's free exercise of his religion.

Moran has not shown that obtaining a marriage license from the state conflicts with any of his religious beliefs. He says that the law of marriage he invokes is the superior law of "the Divine Creator and Legislator of the Universe" and that he is absolutely bound to follow

and obey that law; however, he does not say how obtaining a marriage license interferes with following that law.

He does contend that the requirement for obtaining the state's permission to marry elevates the state to the status of a creator. We note, however, that Moran incorrectly characterizes the issuance of a marriage license as the state's "permission" to marry because "permission" implies consent to a person's choice of a mate and circumstances of the marriage. The only statutory instances in which the state can be said to permit or not permit marriages is for marriages between certain blood relatives as prohibited by A.R.S. §25-101 and for marriages involving persons under eighteen years of age which require parental consent pursuant to A.R.S. §25-102. These statutes do not affect Moran and are not at issue in this appeal. In issuing marriage licenses, the state "permits" all marriages except where the parties are close blood relatives or where one or both are minors and they lack parental consent. We fail to see how this sort of "permission" would elevate the state to the status of Moran's creator.

Furthermore, obtaining a marriage license would not infringe on Moran's ability to solemnize the marriage in a religious ceremony or to observe his religious beliefs within the marriage.[12] He would be free to enter into a

---

12/ We do note, however, that the state might regulate a person's observance of religious beliefs in a marriage if those beliefs led to acts that violated criminal or civil laws. Despite the constitutional right to believe in any religious doctrine, the right to act upon or exercise those belief is not absolute. Rubino, 480 N.Y.S. at 972. "The very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." Wisconsin v. Yoder 406 (continued...)

premarital agreement that would comport with his religious beliefs as long as the agreement was not unconscionable. See A.R.S. §25-201(A) ("Parties intending to marry may enter into agreements not contrary to good morals or law."); Williams v. Williams, 166 Ariz. 260, 262, 801 P.2d 495, 497 (App. 1990) (antenuptial agreements are enforceable if they do not violate public policy). Thus, the requirement to obtain a marriage license to form a valid marriage does not conflict with Moran's ability to exercise his religious beliefs.

Moran argues that for A.R.S. §§25-111 and 25-121 to be valid, the state must show that it has a compelling governmental interest in requiring a marriage license as a condition for a valid marriage. He notes that the state, which did not appear in the action, has made no such showing.

As discussed above, we find that the marriage license requirement does not substantially burden Moran's exercise of his religion. The "compelling governmental interest" test is applied under RFRA only if the government has substantially burdened a person's exercise of religion, and the government wishes to attempt to justify its action. See 42 U.S.C §2000bb-1. Because Moran has not met this threshold showing of substantial burden, we need not consider whether a compelling governmental interest is present.

Moran also argues that application of A.R.S. §§25-111 and 25-121 to invalidate his marriage burdens his religious beliefs concerning the custody of his child. If he was not married to Braun when their child was born, he must establish his paternity before he can petition for

---

12/ (...continued)
U.S. 205, 215-16 (1972).

custody of or visitation with the child. Moran asserts that he cannot pursue a paternity action without denying the validity of his marriage, which would require him to violate his belief that the marriage is valid under the tenets of his religion.

We conclude that Moran has no such dilemma. As the trial court wisely pointed out to him at oral argument, once the court declared the marriage invalid, Moran could file his paternity action based on the court's declaration that the marriage is invalid; he would not have to say that he believes the marriage is invalid. Therefore, Moran is not forced by the state to personally deny the validity of his marriage in order to establish paternity and seek custody of his child.

B. Enforceability of the Contract

Moran seems to argue that even if A.R.S. §§25-111 and 25-121 are valid, that contract between him and Braun is nevertheless enforceable. We disagree.

As noted above, Moran and Braun were not married because they did not obtain a marriage license. Therefore, their private marriage contract did not establish a marriage, and any terms of the contract relating to the establishment of a marriage are unenforceable. Likewise, any rights given to Moran arising out of the purported marital relationship cannot be enforced.

The other portions of the contract that Moran would like to enforce give him custody of the parties' child. Those terms are also unenforceable. The state may intrude into the parent-child relationship due to the state-s interest in the future well-being of minor children residing in this state. Appeal in Pima County Juvenile Action No. J-77188, 139 Ariz. 389, 392, 678 P.2d 970, 973

(App. 1983). Thus, parents cannot bind the court by their agreements concerning custody. Solomon v. Solomon, 5 Ariz. App. 352, 355, 427 P.2d 156, 159 (1967). Accordingly, Moran and Braun could not by their agreement determine the custody of their child, particularly where Braun disputes the agreement, the paternity of Moran is not legally established, and the matter went before the court.

In sum, the provisions of the parties' marriage contract are unenforceable.

C. Default Judgment

Moran argues that the trial court should have granted him a default judgment because default was entered against Braun, and she did not show good cause for failing to timely answer the complaint. We conclude that the trial court was correct in refusing to enter judgment for Moran, despite the entry of default, because Moran was not legally entitled to the declaratory judgment he sought.

An entry of default establishes as proven all well-pleaded facts. Southern Arizona School for Boys, Inc. v. Chery, 119 Ariz. 277, 281, 580 P.2d 738, 742 (App. 1978). However, the defendant is not held to have admitted conclusions of law. Id. at 281-282, 580 P.2d at 742-43. In exercising discretion as to the entry of a default judgment, the court may consider the merits of the plaintiff's substantive claims. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). If the substantive claims lack merit, the trial court does not abuse its discretion in declining to enter a default judgment. Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

The entry of default against Braun operated as an admission of the facts pled by Moran. However, the

declaratory relief sought by Moran also involved the interpretation and application of statutory law, specifically A.R.S. §§25-111 and 25-121. Entry of default did not entitle Moran to an application of the law that was contrary to the law. In other words, even though default had been entered, the trial court could not have declared that the parties' marriage contract formed a valid marriage where such a declaration would clearly be contrary to Arizona law. Accordingly, the court correctly declined to enter the declaratory judgment sought by Moran, entered judgment that the purported marriage was invalid, and determined that Braun's motion to set aside the entry of default was moot.

D. The State as a Party

Moran argues that the state and/or attorney general did not have to be named as a party in his declaratory judgment action. He notes that the trial court stated in oral argument that in order for Moran to obtain declaratory relief concerning the constitutionality of a statute, he was required to name the state as a party.

The court did make that statement in oral argument, but it did not make any such finding or ruling in its judgment nor did it base its denial of the declaratory judgment sought by Moran on the fact that the state was not a party to the action. Therefore, we need not consider this issue.

E. Admissibility of Videotape of Ceremony

As his final issue, Moran argues that the trial court erred in refusing to admit into evidence a videotape of the religious ceremony that solemnized the marriage of Moran and Braun. We disagree. Whether the marriage was solemnized was not an issue at the oral argument at which the videotape was offered. The issue jwas whether

the parties' failure to obtain a marriage license invalidated their purported marriage. Accordingly, the videotape was irrelevant, and the trial court did not err in precluding its admission.

CONCLUSION

The marriage of Moran and Braun is invalid, and Moran must prove his paternity before he can petition for custody of or visitation with the child. We affirm.

/s/ John W. Thompson
JON W. THOMPSON, Judge

CONCURRING:

/s/ Rudolph K. Gerber
RUDOLPH J. GERBER, Presiding Judge

/s/ Edward C. Voss
EDWARD C. VOSS, Judge

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FILED AUG 23 '95

August 9, 1995

B. Corazzol
Deputy

THE HONORABLE DAVID L. ROBERTS

No. CV 95-90260

DANNY A. MORAN

vs

HELEN MARIE MORAN, et al.

Danny A. Moran
P. O. Box 4225
Mesa, AZ 85211

Helen Marie Moran
nka Helen Marie Braun
c/o Trish Mongtomery
ComCare Case Manager
1930 South Alma School
Suite 208A
Mesa, AZ 85210

8:43 a.m. This is the time set for hearing re: default on plaintiff's complaint for declaratory judgment. Plaintiff, Danny A. Moran, is present on his own behalf. Defendant Helen Marie Moran, nka Helen Marie Braun, is present on her own behalf.

Court Reporter, Laurie Yazwa, is present.

The Court confers with the parties.

Plaintiff Danny A. Moran addresses the Court with regard to the claim and the relief sought therein. After consideration of the matter and arguments of plaintiff, the Court finds and declares that the purported marriage entered into by Danny A. Moran and Helen Marie Braun,

on March 13, 1992, was entered into without the issuance of a marriage license as required by A.R.S. §25-111, and for that reason is not a valid marriage.

The Court further finds and declares that the written marriage contract by which said parties purported to marry each other is not enforceable as a marriage contract, nor as to provisions relating to the custody of the child of the parties.

The motion of respondent Helen Marie Moran, aka Helen Marie Braun, for temporary orders regarding custody and support, are also moot because the paternity of Danny A. Moran as the father of Rebekah Vagina Moran, born September 14, 1993, as alleged in respondent's petition has not as yet been established. If the paternity of Danny A. Moran is established in some way, then Helen Marie Braun, who filed this petition for temporary orders, may petition for custody of the child and support for the child; likewise, the father may petition for custody and support of his child.

Let the record reflect that it is the Court's understanding that a petition for custody was filed by Danny A. Moran in case number DR 95-90540, and that the case was dismissed.

The Court takes judicial notice that juvenile action JD 501281, filed in Juvenile Court, regarding Rebekah Vivina Moran, was dismissed on February 23, 1995.

10:00 a.m. Matter concludes.

23 Aug 1995

/s/ David L. Roberts
HONORABLE DAVID L. ROBERTS
JUDGE OF SUPERIOR COURT

DANNY A. MORAN
P.O. Box 4225
Mesa, Arizona 85211
(602) 969-6869
Plaintiff, In Pro Per

IN THE SUPERIOR COURT STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DANNY A. MORAN	)	
	)	
Plaintiff,	)	No. CV 95-90260
	)	
v.	)	
	)	
HELEN MARIE MORAN and MICHAEL DOYLE	)	COMPLAINT FOR DECLARATORY JUDGMENT
Defendants	)	
	)	

Plaintiff Danny A. Moran (hereinafter "Plaintiff Husband"), for his Complaint against the above-named Defendants alleges as follows:

JURISDICTION AND VENUE

1. This action arises under Article II, §§ 1, 4, 8, 12, 13, 25, 32 and 33, Article XX, First Ordinance of the Constitution for the State of Arizona and Article 1, § 10, Clause 1 of the Constitution for the United States of America and the First, Fourth, Fifth, Ninth and Tenth and Fourteenth Articles in Amendment to the Constitution of the United States of America.

2. Jurisdiction is vested in this Court under the provisions of Article VI, § 14, Clause 11, and ARS §§ 12-123 and 12-1831 *et. seq*. Venue lies in this Court pursuant to ARS § 12-401.

PARTIES

3. Plaintiff Danny A. Moran is a married White Man of Hebrew descent; was born in the State of West Virginia; is the Lawful Husband of the Defendant Helen Marie Moran (hereinafter "Defendant Wife"), and has lived in Maricopa County, Arizona for fifteen (15) years.

4. Defendant Wife is a married White Woman; was born in the Commonwealth of Pennsylvania; is the Lawful Wife of the Plaintiff Husband; and has lived in Maricopa County, Arizona with the Plaintiff Husband for three (3) years.

5. Defendant Michael Doyle (hereinafter "Guardian") has been appointed as the Guardian Ad Litem for Rebekah Divina Moran (hereinafter "Child"), the Child of Plaintiff and Defendant Wife, is a resident of Maricopa County, Arizona.

STATEMENT OF THE CASE

6. On March 13, 1992, Plaintiff entered into a certain written Contract with the Defendant Wife. The Contract was entered into in Maricopa County, Arizona. The Plaintiff and the Defendant Wife entered into the Contract knowingly, willingly, intentionally, and with informed consent. The Plaintiff and Defendant Wife were of lawful age and competent, and had no legal, conventional, or other disabilities to hinder entering into the Contract.

7. The Marriage was solemnized in a Religious Ceremony before friends and family wherein the Plaintiff and Defendant Wife became One under the Devine Law in accordance with the terms of the Contract.

8. Pursuant to the terms of the Contract, the Plaintiff and Defendant Wife agreed, inter alia:

A. That the Religious Union thus established would be structured according to the Patriarchal Laws of Holy Scripture;

B. That all Children resulting from this Religious Union would be subject only to the authority of the Plaintiff, and could not be compelled to contract into any form of civil servitude repugnant to and violative of the Divine Law and the Contract;

C. That all civil law relevant to Marriage and Family not in conformance with the Principles of Divine Law and the Contract are repudiated, are non-binding and un-enforceable upon this Religious Union.

9. Defendant Wife fully complied with all the terms of the Contract from March 13, 1992, through October 31, 1993.

10. On September 14, 1993, the Defendant Wife gave birth to a Daughter, fathered by the Plaintiff Husband, named the Rebekah Davina Moran.

11. The Defendant Wife suffers from emotional disorders resulting from childhood abuse. Prior to giving birth, none of these disorders manifest themselves significantly. Subsequent to the birth, the Defendant Wife began to manifest aberrant behavior so as to alarm the Plaintiff, some of which includes but is not limited to:

A. From November 1, 1993 through late January, 1994, the Defendant Wife removed the Child from custody of the Plaintiff four (4) times, without his consent and in violation of the terms of the Contract as enumerated above.

B. During this period, the Defendant Wife was convinced by family members and the advice of an attorney, a member of the Bar in this State, and by the Mesa City Police, that pursuant to ARS §25-111(B) she is not **"legally"** married to the Plaintiff, that the Contract is not valid or enforceable, and as a direct and proximate result of those opinions, Defendant Wife was led to believe that she can deprive the Plaintiff of his Lawful Custody of the Child whenever she is in the grips of her mental illness. At no time prior to the birth of their

Child or during the periods when her illness was stabilized through medication did the Defendant Wife, claim or argue that the Contract was invalid, that the Marital Union was invalid or that the Plaintiff did not at least enjoy joint custody, if not full custody, of their Child.

C. In late January 1994, or early February 1994, the Defendant Wife attempted to remove the Child from his Lawful Custody for a fifth (5th) time, but was prevented from doing so by the Plaintiff. The Plaintiff placed the Child in protective custody to prevent any further harm being done to her as result of the Defendant Wife's aberrant behavior, and kept the Child in protective custody until the Defendant Wife agreed to submit to medical examination to determine the cause of her behavioral disorders.

D. The Defendant Wife admitted herself to the Maricopa County Mental Health Facility where she was diagnosed as suffering from both severe depression and a bi-polar condition. She was placed on medication to treat the condition. The Defendant Wife remained on the medication for approximately eight (8) months, and during that time exhibited nearly the same behavior she exhibited when the Plaintiff first met her.

E. The Defendant Wife decided she wanted to have another Child, and without consent of her physician, stopped taking her medication. Over a period of three and one half (3 1/2) to four (4) months, the Defendant Wife's aberrant behavior began to manifest itself to the same conditions exhibited prior to her diagnosis and treatment. During the previous period before treatment, the Defendant Wife had expressed suicidal thoughts. The Plaintiff has reason to believe and therefore alleges that the Defendant Wife has again begun having suicidal thoughts.

F. On January 24, 1995, without any warning, the Defendant Wife once again disappeared, removing the Child from the Plaintiff's Lawful Custody without his consent, and continues to conceal from the Plaintiff the location or mental, emotional, and physical condition of the Child in violation of the express terms of the Contract.

12. On January 30, 1995, the Plaintiff commenced an action seeking an emergency Order of Custody. The Domestic Relations Division of the superior Court declined to take jurisdiction for the Order, noted that the Plaintiff and Defendant Wife were in fact married, and transferred the matter to the juvenile division of the superior Court.

13. On January 30, 1995, the Honorable Colin Campbell of the juvenile division appointed Defendant Michael Doyle as guardian ad litem for the Child and Ordered the Guardian to Contact the parties as soon as possible and report back to the court in 48 hours. The Plaintiff is credibly informed and believes and therefore alleges that the Defendant Wife has previous retained the services of or sought legal advice from Michael Doyle or the Law Firm for which Michael Doyle works.

14. The Plaintiff is credibly informed and believes and therefore alleges that the Guardian has filed, or will file before this matter can be heard upon the merits, a pleading with the Juvenile Court alleging that the Plaintiff is not married to the Defendant Wife, and has moved or will soon move the Juvenile Court to determine that the Child is dependent and a ward of the State.

15. On February 1, 1995, Defendant Wife filed a petition in the superior Court seeking a protective order. In said petition the Defendant alleged that the Plaintiff hit her, had taken the baby away from her and that the Plaintiff and Defendant Wife were not married and were merely living together.

CAUSE OF ACTION

16. The Plaintiff realleges each and every allegation and averment of paragraphs 1 through 14, of this Complaint and incorporates the same by this reference, as if fully set forth herein.

17. The Plaintiff is credibly informed and believes and therefore alleges that the Defendants are claiming or may claim that the Contract between the Plaintiff and Defendant Wife is not valid and that the Plaintiff and Defendant Wife are not married and as such the Plaintiff has no custodial rights with respect to Rebekah Divina Moran. The Defendants believe that a marriage is only valid in this State after a license issued and the marriage is solemnized in accordance with ARS, § 25-111.

18. The Contract between the Plaintiff and Defendant Wife is valid. The Plaintiff and the Defendant Wife did not Contract for the commission of a crime. There is no crime in marrying or having children.

19. There was no public interest created in the marriage of the Plaintiff and Defendant Wife. Their Marital Union is ***juris privati*** (a matter of private right) only. The Marital Union is not a common law marriage, but a Union based upon Religious Cannons, agreed to under Contract. That in absence of proof of the existence of a public interest, the direct application of the regulatory authority or police powers of the State of Arizona are inoperative. That in absence of proof of the existence of a compelling state interest that adversely affects the health, safety and welfare of the people of this State at large, ARS, § 25-111 *et. seq.* requiring a marriage license and public solemnization is lacking in equal protection of the laws and has interfered in the Plaintiff's and Defendant Wife's Liberty of Conscience and Right to Privacy in violation of Article II, §§ 8, 12, 13 and 32, and Article XX, First Ordinance of the Constitution for the State of Arizona and the Fourteenth,

First, Ninth and Tenth Articles in Amendment to the Constitution of the United States of America.

20. The Contract between the Plaintiff and Defendant Wife that the Custody of the Child would rest with the Plaintiff. The Contract between the Plaintiff and the Defendant Wife must be presumed valid in absence of a finding that the Contract is void on its face. Notwithstanding this presumption and the fact that the Guardian and the Juvenile Division of the superior Court have knowledge of the Contract, the judge of the Court acting under authority of Arizona Statute appointed Michael Doyle as Guardian. In absence of a finding that the Contract was void on its face, the Contract left the Court no alternative but to appoint the Plaintiff as Guardian. The Court's failure to appoint the Plaintiff as Guardian has denied the Plaintiff custody of the Child without probable cause or due process of law and has impaired the Plaintiff's obligation to the Child under the Contract in violation of Article II, § 4, 25 and 32 of the Constitution for the State of Arizona, Article I, § 10, Clause 1 of the Constitution for the United States of America and the Fourteenth, Fourth and Fifth Articles in Amendment to the Constitution of the United States America.

21. The legislature may enact statutes which describe the objects and subjects to be regulated thereunder. However, it must be left to judicial inquiry whether facts show that someone or something falls within the subject or object so regulated. To the extent that the Plaintiff's and Defendant Wife's marriage is invalid, because it was not licensed and solemnized in accordance with ARS, § 25-111 et. seq., the statutory provisions constitute a Bill of Pains and Penalties, in violation of Article II, § 25 and 32 of the Constitution for the State of Arizona and Article I, § 10, Clause 1 of the Constitution for the United States of America. The Plaintiff and Defendant Wife are being

denied the opportunity for judicial inquiry under the statute to determine whether they are the objects or subjects regulated thereunder. The statutes facially fail to provide for any administrative or judicial inquiry, either prior to attachment of agency jurisdiction or at least a promptly after agency jurisdiction has been asserted.

22. The Paternity of the Child is not in dispute. The Plaintiff is the Child's father. Even assuming *arguendo* that this Court finds that the Contract and the Marriage of the Plaintiff and Defendant Wife is invalid under Arizona Statute, when the parentage of the Child is not in dispute, there is a presumption of joint custody. Custody of a Child of an unwed Mother is only deemed exclusive with respect to determining whether there has been criminal custodial interference.

23. The Plaintiff has been deprived of the custody of his Child. The Defendant Wife has breached her Contractual obligations to the Marital Union and to the Plaintiff. The Juvenile Division of the superior and the Defendant Guardian have failed in their obligations as officers of the State to acknowledge and enforce the Contract and have otherwise interfered in the Plaintiff's obligations under the Contract.

RELIEF SOUGHT

Wherefore, the Plaintiff having no other plain, speedy or adequate remedy requests that this Court:

A. Declare that the Contract is valid and enforceable, any Arizona statute to the contrary notwithstanding; and,

B. Declare that a valid Marital Union exists; and,

C. Declare that Defendant Wife is in breech of the Contract and that she may not remove the Child from the custody of the Plaintiff without his consent; and,

D. Declare that Defendant Wife must, upon the appropriate application of the Plaintiff, return the Child

to the Custody of the Plaintiff pending the resolution of this action; and,

E. Declare that the Plaintiff is the Sole and Lawful Custodian of the Child and should be recognized as the Lawful Guardian for the Dependency proceedings in the Juvenile Court; and,

F. Declare that ARS § 25-111 *et. seq.* is Constitutionally invalid, as applied, for the reasons set forth in the Complaint

G. Permanently enjoin the Defendants, and each of them, from further interference with the Plaintiff Husband's Lawful Custody of his Infant Daughter.

H. Awarding such other and further relief as the Court deems just and proper in the premises.

DATED this 9th day of February, 1995.

/s/ Danny A. Moran
Danny A. Moran
All Rights Reserved
Without Prejudice

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APPENDIX B
CONSTITUTION AND STATUTES

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CONSTITUTIONAL AUTHORITIES

First Amendment, Constitution of the United States of America

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

STATUTORY PROVISIONS

United States Statutes

Religious Freedom Restoration Act of 1993. P.L. 103-141; 107 Stat. 1488; 42 U.S.C. § 2000bb.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regligious Freedom Restoration Act of 1993"

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) **Findings**. -- The Congress finds that--

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 US 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws netral toward religion; and

(5) the compelling interest test as set forth in prior Federal Court rulings is a workable test for striking

sensible balances between religious liberty and competing prior governmental interests.

(b) **Purposes**.-- The purposes of this Act are--

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 US 398 (1963) and Wisconsin v. Yoder, 406 US 205 (1972) and to guarntee it application in all cases where free exercise of religion in substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

SEC. 3. FREE EXERCISE OF RELIGION PROTECTED

(a) **In General**.--Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)

(b) **Exception**.-- government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

(1) is in furtherance of a compelling governmental interest;

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) **Judicial Relief**.--A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

SEC. 4. ATTORNEYS FEES.

(a) **Judicial Proceedings**.--Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by instertin "the

Religious Freedom Restoration Act of 1993" before "or title VI of the Civil Rights Action of 1964".

(b) **Administrative Proceedings**. --Section 504(b)(1)(C) of Title 5, United States Code, is amended--

(1) by strking "and" at the end of clause (ii);

(2) by striking the semicolon at the end of clause (iii) and inserting ", and"; and

(3) by inserting "(iv) the Religious Freedom Restoration Act of 1993;" after clause (iii).

SEC. 5. DEFINITIONS.

As used in this Act--

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means the exercise of relgion under the First Amendment of the Constitution.

SEC. 6. APPLICABILITY.

(a) **In General**.--This act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this Act.

(b) **Rule of Construction**.--Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference of this Act.

(c) **Religious Belief Unaffected.**--Nothing in this Act shall be construed to authorize any government to burden any religious belief.

SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

ARIZONA STATUTES

UNIFORM DECLARATORY JUDGMENTS ACT

12-1831. Scope.

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

12-1832. Power to construe, etc.

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity

arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

12-1833. Before breach.
A contract may be construed either before or after there has been a breach thereof.

12-1834. Personal representatives, etc.; declaration of rights.
Any person interested as or through a personal representative, administrator, trustee, guardian, conservator or other fiduciary, creditor, devisee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, ward, or insolvent, may have a declaration of rights or legal relations in respect to any of the following:
1. To ascertain any class of creditors, devisees, heirs or others; or
2. To direct the personal representatives, administrators, trustees, guardians or conservators to do or abstain from doing any particular act in their fiduciary capacity; or
3. To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

12-1835. Enumeration not exclusive.
The enumeration in §§ 12-1832, 12-1833 and 12-1834 does not limit or restrict the exercise of the general powers conferred in § 12-1831, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

12-1836. Discretionary.
The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if

rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

12-1837. Review.
All orders, judgments and decrees under this article may be reviewed as other orders, judgments and decrees.

12-1838. Supplemental relief.
Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by complaint or appropriate pleading to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

12-1839. Jury trial.
When a proceeding under this article involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

12-1840. Costs.
In any proceeding under this article the court may make such award of costs as may seem equitable and just.

12-1841. Parties.
When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be

unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

12-1842. Construction.
This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

12-1843. Words construed.
The word "person" wherever used in this article shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

12-1844. Provisions severable.
The several sections and provisions of this article except §§ 12-1831 and 12-1832, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the article invalid or inoperative.

12-1845. Uniformity of interpretation.
This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

12-1846. Short title.
This article may be cited as the uniform declaratory judgments act.

13-1302. Custodial interference; child born out of wedlock; classification

A. A person commits custodial interference if, knowing or having reason to know that he has no legal right to do so, such person knowingly takes, entices or keeps from lawful custody any child who is less than eighteen years of age or incompetent and who is entrusted by authority of law to the custody of another person or institution.

B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody or access is determined by a court.

C. If committed by a parent or agent of a parent of the person taken, enticed or kept, custodial interference is a class 6 felony unless the person taken, enticed or kept from lawful custody is returned voluntarily by the defendant without physical injury prior to arrest in which case it is a class 1 misdemeanor. If committed by a person other than a parent or agent of a parent of the person taken, custodial interference is a class 3 felony.

25-101. Void and prohibited marriages

A. Marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews and between first cousins, is prohibited and void.

B. Notwithstanding subsection A, first cousins may marry if both are sixty-five years of age or older or if one or both first cousins are under sixty-five years of age, upon approval of any superior court judge in the state if proof has been presented to the judge that one of the cousins is unable to reproduce.

C. Marriage between persons of the same sex is void and prohibited.

25-111. Requirement of license and solemnization

A. A marriage may not be contracted by agreement without a marriage ceremony.

B. A marriage contracted within this state is not valid unless all of the following occur:

1. A license is issued as provided in this title.

2. The marriage is solemnized by a person authorized by law to solemnize marriages, or by a person purporting to act in such capacity and believed in good faith by at least one of the parties to be so authorized.

3. The marriage is solemnized before the expiration of the marriage license application.

25-121. Marriage license; application; issuance; loss of license; affidavit; duplicate license

A. No persons shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the superior court in any county of this state.

B. Persons who desire to marry may apply to the clerk of the superior court for a license. The clerk shall require them to take and subscribe to an oath that they will truly depose and declare their names and ages, their places of residence and the relationship between the parties applying for the license. The oath shall be filed by the clerk, and he shall then issue to the applicants a license directed to the persons authorized by law to solemnize marriage. The license is sufficient authority for any such person to solemnize the marriage. The marriage license

application shall state that the marriage license expires twelve months from the date of issuance of the license.

C. If a certificate of marriage required to be recorded by the clerk of the superior court is lost, the clerk shall issue and record a duplicate certificate of marriage upon presentation of an affidavit describing the circumstances of the marriage ceremony which is signed by the person who solemnized the marriage, the persons married and the witnesses to the marriage certificate.

25-125. Marriage ceremony; official; witnesses; marriage license

A valid marriage is contracted by a male person and a female person with a proper marriage license in the presence of an official and two witnesses who participate in a ceremony conducted:

1. By a person authorized to solemnize marriages who signs and files the marriage license with the clerk of the superior court.

2. In the presence of at least tow witnesses of lawful age who sign the marriage license.

25-128. Unlawful acts of person authorized to solemnize marriages; classification

A. It is unlawful for any person who is authorized to solemnize marriages to:

1. Knowingly participate in or by his presence sanction the marriage of a person under the age of eighteen years who obtained a marriage license without consent in writing of the parent or guardian lawfully entitled to give consent.

2. Solemnize a marriage without first being presented with a marriage license as required by the laws of this state.

3. Fail to file the marriage license with the act of solemnization endorsed on the marriage license within thirty days of the ceremony.

4. Knowingly make a false return of a marriage or pretended marriage to the clerk of the superior court.

B. A violation of this section is a class 2 misdemeanor.